United Nations AT/DEC/1112

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1112

Case No. 1205: SURESH Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Mr. Omer Yousif Bireedo; Ms. Brigitte Stern;

Whereas, on 1 November 2000, Lakshminarasimha Suresh, a staff member of the Economic and Social Commission of Asia and the Pacific (hereinafter referred to as ESCAP), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 17 April 2001, the Applicant, after making the necessary corrections, again filed an Application, requesting the Tribunal:

"PLEAS

1. To review the decision of 13th September 2000 and classify the post I occupy at G7.

2. [To upgrade my] post to [the] G7 level on par with Technology Management unit In-Charge to bring parity among the peers of the center.

3. [To recognize] the increased responsibilities from November 1996 and the demonstrated ability to function at a clearly recognizable higher level than my present level ... The difference in salary emoluments should be paid retroactively.

4. To grant special post allowance as entitled by staff rules.

5. [To] award a compensation of US$ 10,000 for the inordinate delay in classifying my post appropriately and consequent stress, strain and anxiety. ..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 October 2001 and periodically thereafter until 15 April 2002;

Whereas the Respondent filed his Answer on 15 April 2002;

Whereas the Applicant filed Written Observations on 15 May 2002;

Whereas tye Applicant filed additional documentation on 24 May 2003;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 1 July 1983, on a fixed-term appointment as a Machine Operator at the BG-1 level with the Asian and Pacific Centre for Transfer of Technology, ESCAP, (ACPTT). He separated from service on 13 May 1993 and periodically thereafter served on special service agreements and one fixed term contract.

On 1 January 1996, the Applicant re-entered the service of ESCAP on a one-year fixed-term appointment as a Publications Clerk at the ND-3 level.

On 30 November 1998, the Applicant submitted a request for reclassification of his G-3 post, asserting that increased responsibilities merited an upgrade of the post to a G-7 level. The subsequent classification analysis resulted in the post being classified at the G-4 level effective 1 March 1999, and on 17 March 1999, the Applicant was so advised. On 12 May, the Applicant appealed to the Executive Secretary, ESCAP.

On 17 December 1999, the Chief, Division of Administration, ESCAP, submitted the appeal to the General Service Classification Appeals Committee (GSCAC). GSCAC responded on 13 March 2000, recommending that the post be reclassified to the G-5 level. On 5 July, the Chief, Division of Administration, informed the Executive Secretary that his Division supported this recommendation.

On 11 September 2000, the Applicant was sent a copy of the GSCAC report and informed that the Executive Secretary had concurred with the recommendation to upgrade the post to G-5.

On 13 October 2000, a vacancy announcement for the post in question was issued. On 10 November 2000, the Applicant was interviewed for the post by the Director, APCTT, his supervisor, but was not recommended. On 16 October 2001, the Chief, Personnel Services Section, advised the Director, APCTT, that the appointment and promotion bodies did not find adequate justification to grant the Applicant an accelerated promotion. On 7 March 2001, the Officer-in-Charge, Personnel Services Section, advised the Director, APCTT, that the Departmental Panel had a reservation in endorsing his recommendation for the promotion of the Applicant.

On 17 April 2001, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Respondent erred in his classification of the post.

2. The Applicant's actual functions differ from the job description of the post.

3. The Applicant is entitled to a special post allowance (SPA).

4. The Respondent did not implement the recommendation of the GSCAC in a timely manner, thus demonstrating prejudice towards the Applicant.

Whereas the Respondent's principal contentions are:

1. The Respondent's discretionary decision with regard to the classification level of the Applicant's post was properly taken following an independent review by a specialized appeals body in accordance with the standards promulgated by the International Civil Service Commission.

2. The Applicant is not entitled to an SPA.

The Tribunal, having deliberated from 10 to 24 July 2003, now pronounces the following Judgement:

I. The Applicant hereby requests the Tribunal to review the decision of 13 March 2000 and classify the post he occupies at the G-7 level. He contends that parity would thus be established with the level of the In-Charge of the Technology Management Unit, APCTT, who is placed at level G-7. He bases his petition on the assertion that the job functions of both posts are equivalent. He also contends that, since November 1996, his post had been assigned increased responsibilities and that, therefore, the difference in salary emoluments between those he received and those corresponding to the G-7 level (the level to which he claims his post should be upgraded) should be paid to him retroactively.

II. The Tribunal has consistently held that decisions relating to classification fall within the discretion of the Respondent. For instance, in its recent Judgement No. 1073, *Rodríguez* (2002), involving similar classification issues, the Tribunal held that:

> "the final decision regarding classification of the post fell within the discretion of the Executive Director. (See also Judgement No. 784, *Knowles* (1996).) This discretion is not unfettered, however, as the Tribunal has repeatedly stated that it may be vitiated by the existence of bias, prejudice, discrimination, lack of due process or other improper motivation."

The Tribunal additionally recalls its Judgement No. 792, *Rivola* (1996), wherein it stated

> "[i]t is clear to the Tribunal that it cannot substitute its judgement for that of the Respondent in job classification matters ... The role of the Tribunal is to determine whether, under the circumstances, the Respondent acted within his reasonable discretion."

In the instant case - as in any case where arbitrariness, discrimination or other such improper motivation is alleged - the *onus probandi*, or burden of proof, rests upon the Applicant. (See Judgements No. 639, *Leung-Ki* (1994); *Knowles*, *ibid.*; and, No. 870, *Choudhury* and *Ramchandani*(1998).)

III. Such are, then, the limits to the discretion of the Administration regarding classification of posts. The role of the Tribunal in those cases is not to substitute its judgement for that of the Administration, but to look for the existence of bias, prejudice, discrimination or any other improper motivation, or the violation of the due process of law. To reiterate, the burden of proof rests with the Applicant (see Judgements and No. 553, *Abrah* (1992) and, No. 613, *Besosa* (1993)). The Tribunal is satisfied that the Applicant neither succeeded, nor even seriously attempted, to prove the existence of such vices in the present case. Thus, his claim in this regard must fail.

IV. With regard to the claim for payment of retroactive salary emoluments at the higher level, the Tribunal noted in its Judgement 1064, *Paluku* (2002)

> "the Applicant's contention that he was entitled to receive an [special post allowance (SPA)] for the period between 1 August 1990 and 30 June 1991, during which he acted as Officer-in-Charge of the Finance and Administration Section of the Office. Staff regulation 103.11 (b) provides that a staff member given all the responsibilities and obligations of a post higher than his or her own may, in exceptional circumstances, receive an SPA. The granting of such an SPA is far from being a right of the staff member; on the contrary, the text of the regulation leaves no doubt that it is within the discretion of the Administration. Furthermore, as the Tribunal recognized in Judgement No. 336, *Maqueda Sánchez* (1984), '[s]taff employed by the United Nations are often asked to render services of a character and at a level superior to those for which they have been appointed or employed'."

Therefore, this claim must also fail.

V. Regarding what the Applicant terms "the inordinate delay in classifying his post appropriately", the record shows that he submitted a request for reclassification of his G-3 level post, claiming an increase in his functions, on 30 November 1998. The post was subsequently reclassified at the G-4 level, effective 1 March 1999, which decision the Applicant appealed. As a result of that appeal, the post was retroactively reclassified at the G-5 level, effective the same date. The Applicant was notified of this decision on 11 September 2000. The Tribunal is satisfied that, even though the lapse of time to complete the process of post reclassification was somewhat too prolonged, the delay is due to defects in the system of administration of justice in the Secretariat, that precisely

now the General Assembly and some of its auxiliary bodies are trying to streamline and simplify.

VI. However, there is another aspect of this case that the Tribunal would like to review. The Applicant was promoted to the G-4 level on 1 March 1999. On that, the Applicant and the Respondent agree. When the internal vacancy announcement was issued, in October 2000, the Applicant had not completed three years at the G-4 level, the minimum necessary for his promotion to G-5, unless he received an accelerated promotion. In an interview conducted on 10 November 2000, he was found to be not up to the level of efficiency necessary for an accelerated promotion. In this regard, the Chief, Personnel Services Section, advised the Director, APCTT, in November 2001, "that the appointment and promotion bodies at ESCAP did not find adequate justification to grant the staff member accelerated promotion". Accelerated promotion generally demands superior performance which may explain why the examiners during the interview were rather more demanding than usual, despite the fact that the Applicant received the rating of "fully meets expectations" in his PAS of the preceding years. However, the Applicant became eligible for consideration for promotion on 1 March 2002. His PAS for 2002 and 2003 show consistent satisfactory performance. Had his performance been unsatisfactory, this should have been properly reflected in his PAS. This is not the case, and the Applicant continues to this day to perform G-5 level work, being compensated on a G-4 level. The Tribunal does not consider that a staff member should be obliged to perform tasks of a higher level than his or her own for very long periods. The rules which place a limit on the granting of a special post allowance to normally no more than one year would appear to reinforce that opinion. Accordingly, the Applicant should receive compensation.

VII. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant the difference in his current salary and that at the G-5 level, with appropriate benefits and entitlements, commencing 1 March 2002, until he is promoted to the G-5 level; and,

2. Rejects all other pleas.

(Signatures)

Julio **Barboza**
President

Omer Yousif **Bireedo**
Member

Brigitte **Stern**
Member

Geneva, 24 July 2003

Maritza **Struyvenberg**
Executive Secretary

/SURESH